IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

Crl.MC.No. 514 of 2007()

CC.1661/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER: ACCUSED

AMRUTH THOMAS ALIAS JOJAN, AGED 32 YEARS
S/O.THOMAS, KADAVILPARAMBIL HOUSE,
MUNDAMVELI, OPP.NAVI NAGAR, KOCHI-7.

BY ADV. SRI.K.DIVAKARAN NAIR
SRI.D.VINOD NAIR

RESPONDENTS:

THE S.I.OF POLICE, KOCHI KASBA
POLICE STATION, REPRESENTED BY THE DIRECTOR OF
PROSECUTION, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.514 of 2007

Dated this the 27th day of February, 2007

ORDER

The petitioner faces indictment in a prosecution under Sections 353 and 294(b) of the Indian Penal Code. The case was registered as early as in 2004. When Cws 1 and 4 were examined on two different dates as Pws 1 and 3, the learned Magistrate, it is evident from Annexure-AI application, had graciously accepted the request to pass over the case to enable the counsel for the accused to appear and do the cross examination. But the counsel was not present and the learned Magistrate was constrained to note that there was no cross examination. Later an application appears to have been filed to recall Pws 1 and 3 for cross examination. The learned Magistrate considered the said request and by the impugned order, a copy of which is produced as Annexure-AII, proceeded to dismiss the application on the ground that there is no sufficient cause to allow the petition. The learned Magistrate further noted that no specific reason could be urged by the accused to recall the witnesses.

2. The learned counsel for the petitioner, even though initially made an attempt to picture that the learned Magistrate has committed a very grave error, towards the end, only prays that indulgently a

further opportunity may be granted to the petitioner to cross examine Pws 1 and 3. I have no sympathy lost in the course followed by the petitioner and his counsel of not cross examining the witness in the 2004 case after indulgent opportunity was granted by passing over the matter till after lunch. However, the conscience of a Court will be hurt, if an accused who wants to cross examine a witness does not get the opportunity to cross examine that witness and if reliance were to be placed on such unchallenged testimony of the witness. I am, in these circumstances, persuaded to agree that invoking the powers under Section 482 Cr.P.C, an indulgent further opportunity can be granted to the petitioner to cross examine Pws 1 and 3 as requested by the learned counsel for the petitioner. This is being done not because the accused has the right to make such a request, but because of the conscience of the court will be hurt if it were to be obliged to place reliance on the unchallenged testimony of the witness. The luxury of a further opportunity can, of course, be granted to the petitioner, but subject to very specific terms.

3. This Crl.M.C is, in these circumstances, allowed. The learned Magistrate shall give the petitioner an opportunity to cross examine Pws 1 and 3 after recalling them on condition that the petitioner deposits cost of Rs.250/- (Rupees Two Hundred Fifty only)

each in addition to the bata payable to the witnesses, within a period of 10 days from this date before the court below for payment to the witnesses concerned.

(R.BASANT, JUDGE)

rtr/-